Government of the District of Columbia
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: **The Honorable Vincent C. Gray**
Chairman, Council of the District of Columbia

FROM: **Natwar M. Gandhi**
Chief Financial Officer

DATE: **March 29, 2010**

SUBJECT: **Fiscal Impact Statement – "Legalization of Marijuana for Medical Treatment Amendment Act of 2010"**

REFERENCE: **Bill Number 18-622, Draft Committee Print Shared with OCFO on March 26, 2010**

Conclusion

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the provisions of the proposed legislation.

Background

The proposed legislation would amend the Legalization of Marijuana for Medical Treatment Initiative of 1998[1] to establish a medical marijuana program ("Program") and provide details on the use and distribution of medical marijuana. Specifically, the bill would:

- Allow qualifying patients[2] to cultivate, possess and use medical marijuana, and to designate a caregiver who would have the right to cultivate, possess and distribute medical marijuana for the patient.
- Allow physicians to recommend the use of medical marijuana without legal repercussions if done so according to the law.
- Provide requirements for recommending physicians.
- Require the Department of Health (DOH) to register all qualifying patients and caregivers.

[1] Enacted September 20, 1999 (D.C. Act 13-138).
[2] "Qualifying patient" means a resident of the District who has a qualifying medical condition or is undergoing a qualified medical treatment.

- Require that cultivation centers, dispensaries and employees of dispensaries register with the Mayor.
- Require the Mayor to issue nontransferable registration identification cards that expire annually to registered persons and entities.
- Require that all dispensaries and cultivation centers maintain complete and accurate records of all activities and transactions involving the cultivation, distribution, and possession of medical marijuana.
- Require the Mayor to: 1) develop and provide educational materials; 2) conduct unannounced inspections of dispensaries, cultivation centers, and any other site at which a person is registered to cultivate medical marijuana; 3) establish sliding-scale registration and annual renewal fees; 4) submit to the DC Council an annual report; and 5) establish standards for dispensary and cultivation centers.
- Prohibit the use of medical marijuana in public.
- Limit the amount of medical marijuana that can be distributed and possessed by a dispensary.
- Limit the number of dispensaries to 5 and permit the Mayor to increase this number to 8 through rulemaking. The number of cultivation centers would be limited pursuant to future rulemaking.
- Authorize the Board of Medicine to review and audit written physician recommendations submitted as part of the registration process.
- Exempt registered individuals who are complying with the law from criminal prosecution.
- Prohibit the use of medical marijuana as a defense to committing a crime.
- Establish a penalty for fraudulent representation to a law enforcement official regarding the use of medical marijuana to avoid arrest or prosecution.
- Clarify that this act does not require health insurance plans to cover medical marijuana.
- Require the Mayor to issue rules to implement this act including with regard to cultivation practices and hours of operation of cultivation centers and dispensaries; determining the number of cultivation centers that may operate in the District and application fees for the centers and dispensaries; and establishing a marijuana advisory committee and civil fines.

Financial Plan Impact

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the provisions of the proposed legislation. The legislation would require qualified patients to pay annual registration fees and it clearly states that "the registration and annual renewal fees for dispensaries and cultivation centers and the directors, officers, members, incorporators, agents, and employees of dispensaries and cultivation centers *shall be sufficient to offset any remaining expenses related to administering this act.*"[3] In addition, the Metropolitan Police Department has confirmed that they could absorb any additional costs associated with this bill within their existing budget.

[3] Laws in Alaska, Colorado, Michigan, Montana and Rhode Island also stipulate that fees must be sufficient to cover the costs of administering the program. Based on conversations with program staff in Michigan, Montana, New Mexico, their revenues are currently greatly exceeding the costs.

However, in order for the fee structure to sufficiently cover the costs of administrating the program, it would need to take into consideration the likelihood that revenues from any given fee in the initial years of implementation would be relatively low. The fees from qualified patients and caregivers in the first year would only come from first-time registrants, while in the out-years they would come from both first-time registrants and renewals.[4] Also, due to the small number of registered patients in the initial years, the demand for medical marijuana would be low and as a result, the Mayor would not need to register many cultivation centers and dispensaries. As this demand grew, so would the need to register more of these entities.

If the fees were not designed with these issues in mind and subsequently did not cover all of the costs[5] in the initial years, the result could be a spending pressure for DOH and any other agency involved in the registration process and/or administration of the program.

Using statistics from other states that have implemented medical marijuana programs,[6] the language in the proposed bill, and preliminary information provided by DOH, it is possible to provide an *illustrative example* of the potential costs and fees for the District's program. This example shows that it is possible to design a fee schedule that would cover the first year costs, but also that if registrations did not meet expectations or if the number of allowed cultivation centers was lower, there could be a negative fiscal impact in the first couple of years.

Based on the experiences of other states, it is assumed that the District would:

- Register 300 new qualified patients per year for the first few years.[7]
- Register 200 new caregivers per year.[8]
- Need to employ 1 FTE to process the registrations.[9]
- Charge an annual registration/renewal fee between $25 and $150 for qualified patients.[10]

---

[4] In most states, the renewal fee for qualified patients is the same as the first-time fee, so revenue collections in those states have grown substantially over time. See footnote 8.

[5] Including any start-up costs.

[6] Learning from the experiences of other states can provide valuable information; however, given that each state's laws and practices differ (*e.g.* what medical conditions qualify as those that can be treated with medical marijuana, number of dispensaries, where cultivation takes place, etc.) there does need to be some caution when making comparisons. In general, though, each state has a similar registration process for patients and caregivers as the one proposed by the legislation.

[7] This assumes that new patients would equal .05 percent of the population each year. This is consistent with a 2002 GAO report ("Marijuana: Early Experiences with Four States' Laws That Allow Use for Medical Purposes." November 2002), as well as with more current data from Colorado, Hawaii, Michigan, Montana, New Mexico, Rhode Island and Vermont. It should also be noted that in Colorado, Montana, Hawaii and Rhode Island the annual growth rate in the first few years was relatively stable, but afterwards it increased sharply.

[8] This assumes 2/3 of the patients would have at least one caregiver. In Rhode Island and Vermont (the only two states that charge for registering a caregiver), 80 percent of patients have a caregiver. In Colorado, 67 percent of patients have designated a primary caregiver. In Michigan and Oregon, half have designated a caregiver.

[9] The number of FTEs needed would increase if registrations increased as described in footnote 7. Rhode Island uses .8 FTE and they register approximately 350 new patients per year. Montana employed .5 FTE for the first 4 years of their program when they registered 100-200 new patients per year. When that number jumped to 800, they added another .5 FTE. More recently the number has jumped to 6,069 per year and while they officially still only have 1 FTE dedicated to the program, but 5 staff people work on it. New Mexico used 1 FTE to process 1,200 applications the first year. Michigan employs 3 FTE to deal with the 12,000 new registrations they issued in the first year.

- Charge a reduced fee for low-income patients[11] that ranges from $10 to $25.
- Not charge any fee for caregivers.[12] This is the practice in many states, [13] as the registration of caregivers is not a separate process, but instead part of the qualified patient registration. However, the two smallest states that have legalized medical marijuana—Rhode Island and Vermont—do charge a fee for caregivers.[14]
- Need one cultivation center per 100 patients.[15]

In addition, DOH estimates that they would charge an initial application fee of $5,000 and an annual registration fee of $15,000 for each dispensary and cultivation center. They would also need additional funds for conducting inspections of cultivation centers, dispensaries and any other site at which a person is registered to cultivate medical marijuana, as well as for performing investigations regarding inappropriate physician recommendations.[16]

Illustrative Example of Fiscal Impact of Medical Marijuana Program					
	FY 2010[a]	**FY 2011**	**FY 2012**	**FY 2013**	**Four Year Total**
Expenditures:					
Administrative Officer (Grade 11/12)	$0	($55,000)	($55,000)	($55,000)	($165,000)
Inspector (Grade 13)	$0	($56,250)[b]	($75,000)	($75,000)	($206,250)
Printing, educational/outreach materials, supplies and other	$0	($20,000)[c]	($10,000)	($10,000)	($40,000)
Total Expenditures	$0	($131,250)	($140,000)	($140,000)	($411,250)
Revenues:					
Qualified Patient Annual Registration Fees ($75)[d]	$0	$22,500	$40,500	$58,500	$121,500
Cultivation Center and Dispensary Application Fees ($5,000)[e]	$0	$30,000	$15,000	$20,000	$65,000
Cultivation Center and Dispensary Annual Registration Fees ($15,000)[e]	$0	$90,000	$135,000	$195,000	$420,000
Total Revenues[f]	$0	$142,500	$190,500	$273,500	$606,500
NET IMPACT (positive)	**$0**	$11,250	$50,500	$133,500	$195,250

[10] Alaska, Hawaii and Montana charge $25; Rhode Island charges $75; Vermont charges $50; Colorado charges $90; Michigan charges $100; and Nevada and Oregon charge $150. New Mexico has no fee, but the program is therefore not supported by fees. In Colorado, Michigan, Oregon and Rhode Island the renewal fee is the same as the first-time fee. Montana charges a reduced fee for renewals.
[11] Generally requires patient to be a recipient of Medicaid, Supplemental Security Income or Social Security Disability Income.
[12] DOH also confirmed that as of now, they are not planning on charging them a fee.
[13] Includes Colorado, Michigan, Montana, and Oregon.
[14] The fee is the same for caregivers as it is for patients.
[15] This is based on the experience in New Mexico.
[16] DOH may also need funds to educate physicians prior to allowing them to recommend medical marijuana. It is not clear at this time whether DOH would charge for this service.

[a] Assumes program would not be implemented until FY 2011, as time would be needed to develop rules.
[b] For FY 2011 assumes .75 FTE, as it will take time for dispensaries and cultivation centers to establish themselves.
[c] For FY 2011 also includes funds for start-up costs, such as an ID card machine and simple database (*e.g.* Access).
[d] 70 percent would pay full price and 30 percent would pay a reduced fee of $25 since roughly 30 percent of the District's population are Medicaid beneficiaries. 80 percent of all patients would renew.
[e] Assumes minimal home cultivation and for FY 2011, FY 2012 and FY 2013: 3, 5, and 8 cultivation centers and 3, 4, and 5 dispensaries respectively.
[f] Does not include registration fees for the employees of dispensaries as there was not enough information on these to provide an estimate.